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Committee on the Peaceful Uses of Outer Space

Report of the Legal Subcommittee on its fortieth session, held in Vienna from 2 to 12 April 2001

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I. Introduction

A. Opening of the session and election of the Chairman

1. The Legal Subcommittee held its fortieth session at the United Nations Office at Vienna from 2 to 12 April 2001 under the chairmanship of Vladimír Kopal (Czech Republic).

2. At its opening (639th) meeting, on 2 April, the Legal Subcommittee elected Vladimír Kopal (Czech Republic) Chairman of the Legal Subcommittee for a three-year term of office, from 2001 to 2003.

3. Also at the opening meeting, the Chairman made a statement briefly describing the work to be undertaken by the Subcommittee at its fortieth session. The Chairman's statement is contained in an unedited verbatim transcript (COPUOS/Legal/T.639).

B. Adoption of the agenda

4. At its opening meeting, the Legal Subcommittee adopted the following agenda:

1. Opening of the session, election of the Chairman and adoption of the agenda.
2. Statement by the Chairman.
3. General exchange of views.
4. Status and application of the five United Nations treaties on outer space.
5. Information on the activities of international organizations relating to space law.
6. Matters relating to:
   (a) The definition and delimitation of outer space;
   (b) The character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.
7. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.
8. Consideration of the draft convention of the International Institute for the Unification of Private Law (Unidroit) on international interests in mobile equipment and the preliminary draft protocol thereto n matters specific to space property.
9. Review of the concept of the "launching State".
10. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-first session.

C. Attendance

5. Representatives of the following States members of the Subcommittee attended the session: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Czech Republic, Ecuador, Egypt, France, Germany, Greece, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kazakhstan, Kenya, Lebanon, Malaysia, Mexico, Morocco, Netherlands, Nigeria, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, South Africa, Spain, Sudan, Sweden, Syrian Arab Republic, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Viet Nam.

6. Representatives of the following entities of the United Nations system and other international organizations attended the session: United Nations Commission on International Trade Law (UNCITRAL), United Nations Educational, Scientific and Cultural Organization (UNESCO), International Civil Aviation Organization (ICAO), European Organization for the Exploitation of Meteorological Satellites (EUMETSAT), European Space Agency (ESA), International Astronautical Federation (IAF), International Institute for the Unification of Private Law (Unidroit), International Law Association (ILA), International Mobile Satellite Organization (IMSO), International Organization of Space Communications (INTERSPUTNIK) and International Space University (ISU).

7. At the 639th and 645th meetings, on 2 and 5 April, the Chairman informed the Subcommittee that requests had been received from the Permanent Representatives of Algeria, Cuba, the Democratic People's Republic of Korea, the Republic of Korea, Saudi Arabia and Slovakia to attend the session. The Subcommittee agreed that, since the granting of observer status was the prerogative of the Committee on the Peaceful Uses of Outer Space, it could take no formal decision on the matter, but that the representatives of those countries might attend the formal meetings of the Subcommittee and could direct requests for the floor to the Chairman, should they wish to make statements.

8. A list of representatives of States members of the Subcommittee, States not members of the Subcommittee, specialized agencies of the United Nations system and other organizations attending the session and of staff members of the secretariat of the Subcommittee is contained in document A/AC.105/C.2/INF.33.

D. Organization of work

9. In accordance with decisions taken at its opening meeting, the Legal Subcommittee organized its work as follows:

(a) The Subcommittee re-established its Working Group on agenda item 6 (a), open to all members of the Subcommittee, and elected Socorro Flores Liera (Mexico) to serve as its Chairperson;

(b) The Subcommittee re-established its Working Group on agenda item 9, open to all members of the Subcommittee, and elected Kai-Uwe Schrogl (Germany) to serve as its Chairman;

(c) The Subcommittee began its work each day with a plenary meeting to hear delegations wishing to address it and then it adjourned and reconvened, when appropriate, as a working group.

10. At the opening meeting, the Chairman made a statement concerning the utilization of conference services by the Subcommittee. He drew attention to the importance that the General Assembly and the Committee on Conferences attached to the effective utilization of conference services by all United Nations bodies. In view of that, the Chairman proposed and the Subcommittee agreed that a flexible organization of work should continue to serve as the basis for organizing the work of the Subcommittee with a view to making fuller use of the conference services available.

11. The Subcommittee noted with satisfaction that a symposium entitled "Methods of Peaceful Settlement of Space Law Disputes", sponsored by the International Institute of Space Law (IISL) in cooperation with the European Centre for Space Law (ECSL), had been held during the current session of the Legal Subcommittee, on 2 April 2001. The coordinator of the symposium was E. Fasan of IISL and presentations were made by F. von der Dunk on "Space for dispute resolution mechanisms: dispute resolution mechanisms for space? A few legal considerations", A. Farand on "ESA's experience and practice on dispute settlement mechanisms" and A. Kerrest on "Dispute resolution mechanism for damage caused by space objects". The Subcommittee agreed that IISL and ECSL should be invited to hold a further symposium on space law at the forty-first session.

12. The Legal Subcommittee recommended that its forty-first session be held from 2 to 12 April 2002.

E. Adoption of the report of the Legal Subcommittee

13. The Subcommittee held a total of 17 meetings. The views expressed at those meetings are contained in unedited verbatim transcripts (COPUOS/Legal/T.639-655).

14. At its 655th meeting, on 12 April, the Subcommittee adopted the present report and concluded the work of its fortieth session.

II. General exchange of views

15. Statements were made by representatives of the following member States during the general exchange of views: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, Czech Republic, Ecuador, France, India, Indonesia, Japan, Morocco, Nigeria, Peru, Republic of Korea, Russian Federation, Ukraine and United States. The representative of Peru (on behalf of the Group of Latin American and Caribbean States) also made a statement. The views expressed by those

representatives are contained in unedited verbatim transcripts (COPUOS/Legal/T.639-641).

16. At the 639th meeting, on 2 April, the Director of the Office for Outer Space Affairs made a statement reviewing the role and work of the Office relating to space law. The Subcommittee noted with appreciation the information on the continued work and cooperative activities of the Office in connection with the promotion, understanding, acceptance and implementation of international space law.

17. At its 654th meeting, on 12 April, the Subcommittee commemorated the fortieth anniversary of the first manned flight into space by Yuri Gagarin on 12 April 1961 and the twentieth anniversary of the launch of the first reusable space vehicle, the United States Space Shuttle, on 12 April 1981. The Chairman also drew attention to a message by the Secretary-General on the occasion of the anniversary and read a message from the Space Generation Advisory Council on the celebrations planned in 48 cities to spread interest in space among youth.

18. Some delegations expressed grave concern over the threat of the militarization of outer space and emphasized the need to prevent an arms race in outer space. Those delegations were of the view that every effort should be made to avert that danger and maintain the peaceful uses of outer space. Another delegation expressed the view that the Committee on the Peaceful Uses of Outer Space was mandated to deal exclusively with international cooperation in the peaceful uses of outer space and that the First Committee of the General Assembly, the United Nations Disarmament Commission and the Conference on Disarmament were the more appropriate forums to discuss arms control matters related to outer space.

19. Some delegations expressed concern that, as was the case with the recent de-orbiting of the Mir space station, the South Pacific might become a dumping ground for space objects re-entering the Earth's atmosphere, which would be hazardous not only for the marine environment but also for those States in close proximity to that area. Other delegations noted that the recent Mir re-entry had been carried out in a controlled manner and should be considered a success.

20. The view was expressed that although the Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI), annex) provided a regime on the rights and responsibilities of States if damage occurred from a space object falling to Earth, it was also important to prevent damage arising from such a possibility, in particular in the case of a scheduled re-entry. That delegation was of the view that sufficient advance information about the scheduled re-entry should be provided to those States in the area of the anticipated descent so that adequate precautionary measures could be taken and also that public anxiety could be alleviated.

III. Status and application of the five United Nations treaties on outer space

21. At the 640th meeting, on 2 April, the Chairman made an introductory statement on agenda item 4 and drew the attention of the Legal Subcommittee to the fact that, on the basis of a recommendation of the Committee on the Peaceful Uses of Outer Space at its forty-third session, in 2000, the General Assembly, in its resolution 55/122 of 8 December 2000, had endorsed the recommendation of the Committee that the Subcommittee continue to consider this agenda item as a regular item. The Chairman recalled the agreement at the thirty-ninth session of the Legal Subcommittee that the discussion under this item would include the status of the treaties, review of their implementation and obstacles to their universal acceptance (see A/AC.105/738, para. 111).

22. The Chairman reported briefly to the Subcommittee on the current status of ratifications and signatures of the international treaties governing the use of outer space, in accordance with information provided to the Secretariat by the depositaries of those treaties. With the accession of the United Arab Emirates, the number of ratifications and signatures of the five United Nations treaties governing outer space was, as at 1 January 2001, as follows:

(a) The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the "Outer Space Treaty", General Assembly resolution 2222 (XXI), annex) had 96 States parties and had been signed by 27 other States;

(b) The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (the "Rescue Agreement", resolution 2345 (XXII), annex) had 87 States parties and had been signed by 26 States;

(c) The Convention on International Liability for Damage Caused by Space Objects (the "Liability Convention", resolution 2777 (XXVI), annex) had 81 States parties and had been signed by 26 other States;

(d) The Convention on Registration of Objects Launched into Outer Space (the "Registration Convention", resolution 3235 (XXIX), annex) had 43 States parties and had been signed by 4 other States;

(e) The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the "Moon Agreement", resolution 34/68, annex) had 9 States parties and had been signed by 5 other States.

In addition, one international intergovernmental organization had declared its acceptance of the rights and obligations provided for in the Rescue Agreement; two international intergovernmental organizations had declared their acceptance of the rights and obligations of the Liability Convention; and two international intergovernmental organizations had declared their acceptance of the rights and obligations of the Registration Convention.

23. The Subcommittee had before it the following documents:

(a) The *United Nations Treaties and Principles on Outer Space* (A/AC.105/572/Rev.3 and A/AC.105/722), including ratifications and signatures of the five United Nations treaties governing outer space. The information on ratifications and signatures of the outer space treaties had been updated by the Secretariat and distributed as an insert to that booklet (A/AC.105/722/Add.1);

(b) A list of international agreements and other available international documents relevant to space-related activities (A/AC.105/C.2/2001/CRP.6). The Secretariat had updated the information to include recently published documents and sources of information.

24. The Subcommittee welcomed the reports of member States on the current status of action being undertaken by States concerning accession to the five international legal instruments governing outer space and on action planned in that regard.

25. Some delegations expressed the view that the different levels of technological capability of States prevented increased ratification of the treaties. Those delegations were of the view that in order to increase the ratification of the five United Nations treaties it was imperative to disseminate knowledge of the benefits of technology and to improve the technological capabilities of developing countries by means of the sharing and transfer of technology.

26. Some delegations expressed the view that the lack of ratification by member States of the outer space treaties was related to their level of interest in outer space activities and thus the ratification of the treaties did not enjoy the same level of priority as did other international treaties. The view was expressed that the importance of ratifying the outer space treaties lay not only in being directly involved in space activities but also in being drawn into issues relating to outer space as a result, for example, of space objects' re-entering the Earth's atmosphere and falling into a State's territory. That delegation suggested that promotion of the benefits of ratifying the outer space treaties could be achieved by holding seminars or regional meetings.

27. The view was expressed that one of the reasons for the cautious approach by some States to becoming parties to the United Nations treaties could be the existence of the possibility of amendments being made or changes occurring in the interpretation of the terms of the treaties, especially in view of the discussions relating to the concept of the "launching State".

28. The view was expressed that, although the provisions of the treaties were managing well with the increasingly complex activities of outer space, member States should focus on their domestic legal regimes in order to ensure that the provisions of the treaties were being properly implemented, including putting in place appropriate domestic regulatory mechanisms to ensure effective compliance.

29. Some delegations recalled and supported the recommendations of the Working Group on the Review of the Status of the Five International Legal Instruments Governing Outer Space, convened at the thirty-eighth session of the Legal Subcommittee, in 1999, and urged States to make declarations in accordance with paragraph 3 of resolution 2777 (XXVI), to

take obligations on a reciprocal basis to recognize the binding character of the decisions of the Claims Commission under the Liability Convention. Those delegations were of the view that such declarations by States parties would enhance the effectiveness and credibility of the Convention.

30. Some delegations expressed the view that, with the rapid evolution of technology and the increasing commercialization of space activities, it was necessary to identify improvements or mechanisms to strengthen the existing legal framework governing the peaceful uses of outer space. The view was expressed that the increasing involvement of private industry in space activities required some clarification of specific terms within the legal instruments governing outer space activities in order to strengthen their application.

31. Some delegations expressed the view that the Moon Agreement should be examined further with a view to identifying the reasons for its low level of ratification and signature by Member States and international organizations and to considering possible measures to address the situation.

32. Some delegations were of the view that a working group should be established on the item, as proposed by Greece, to examine the reasons for the low level of ratification and signature of the five international treaties on outer space and to consider measures to achieve the widest and fullest adherence to them.

33. Some delegations expressed the view that the time had come for the Subcommittee to discuss the appropriateness and desirability of drafting a universal comprehensive convention on space law, as had been done in the case of the United Nations Convention on the Law of the Sea.[1] Those delegations were of the view that the Subcommittee should convene an ad hoc informal open-ended working group to consider the issue, as proposed in the working paper submitted by China, Colombia and the Russian Federation (A/AC.105/C.2/L.226). Some of those delegations believed that the five international legal instruments governing outer space were, by their nature, interdependent and that a holistic approach should therefore be taken in their review and analysis in relation to possible future revision and amendment.

34. The view was expressed that the convening of a working group to consider the appropriateness and desirability of developing a universal comprehensive convention on international space law was not envisaged in the arrangements for the fortieth session of the Legal Subcommittee. That delegation was also of the view that it would not be appropriate for the Subcommittee to take up the proposal in view of the General Assembly's direction that the Subcommittee seek to promote adherence to the existing outer space treaties.

35. The Legal Subcommittee conducted informal consultations, coordinated by Vassilios Cassapoglou (Greece) and Niklas Hedman (Sweden), with a view to reaching agreement on, inter alia, the proposals submitted by delegations under agenda item 4.

36. The full text of the statements made by delegations during the discussion on agenda item 4 is contained in unedited verbatim transcripts (COPUOS/Legal/T.640-644 and 654).

IV. Information on the activities of international organizations relating to space law

37. At the 641st meeting, on 3 April, the Chairman made an introductory statement on agenda item 5 and drew the attention of the Legal Subcommittee to the fact that this was a regular agenda item as agreed upon by the Subcommittee at its thirty-ninth session and endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-third session.

38. The Legal Subcommittee noted with satisfaction that various international organizations had been invited by the Secretariat to report to the Subcommittee on their activities relating to space law and agreed that a similar invitation should be extended by the Secretariat for the forty-first session of the Subcommittee, in 2002.

39. The Legal Subcommittee had before it two documents (A/AC.105/C.2/L.223 and A/AC.105/C.2/2001/CRP.9), which contained reports from the following international organizations on their activities relating to space law: UNESCO, ECSL, ESA, EUMETSAT, IISL, ILA and INTERSPUTNIK.

40. In addition, representatives of the following international organizations reported to the Subcommittee, in the course of the debate, on their activities relating to space law: UNESCO, ICAO, ESA,

EUMETSAT, ILA, INTERSPUTNIK, the International Space Law Center (ISLC) and ISU.

41. The view was expressed that space-related intergovernmental organizations and their member States should consider the requirements for acceptance by those organizations of the rights and obligations under the provisions of certain of the United Nations treaties governing outer space and the possible steps that might be taken in that regard to encourage the wider adherence of such organizations to international space law.

42. The view was expressed that a regional seminar or a symposium on international space law should be organized in Africa, targeted in particular at countries not represented in the Committee and thereby encouraging greater participation of those States in the outer space treaties.

43. Some delegations welcomed and expressed their support for the report of the World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) of UNESCO published in 2000. Those delegations stressed the importance of taking ethics into account in the implementation of space policies and international cooperation, as well as in drafting new documents regulating outer space activities. In their view, the mandate of the Committee on the Peaceful Uses of Outer Space included a strong ethical component.

44. Some delegations expressed the view that the proposed initiative to create a high authority for outer space similar to the existing Seabed Authority merited serious consideration by the Subcommittee. Some of those delegations expressed the view that the COMEST report should become a working document of the Subcommittee and that a working group on ethics should be established. In that connection, the attention of the Subcommittee was drawn to the fact that during the Third United Nations Conference on the Peaceful Uses of Outer Space (UNISPACE III)[2] it was proposed that an international authority for outer space be established.

45. Other delegations expressed the view that the mandate of the Legal Subcommittee was limited to the examination of legal matters and that ethical matters, while being relevant to a certain extent to that mandate, were nevertheless outside the tasks set for the Committee on the Peaceful Uses of Outer Space by the General Assembly. Some delegations also expressed the view that there existed fundamental differences between the international legal regime of outer space and that of law of the sea and that it was necessary to exercise great caution in attempting to apply some elements of the legal regime designed for one specific sphere to another.

46. The view was expressed that the COMEST report essentially advocated an idea similar to a proposal to establish a world space organization made in the United Nations by the former Union of Soviet Socialist Republics in the mid-1980s. That delegation recalled that even the earlier much less ambitious proposal had failed to gain the necessary support. In addition, that delegation expressed the view that the COMEST report contained certain inaccuracies concerning a number of specific provisions in the existing outer space and law of the sea instruments and that the authors of the document might wish to correct them in the future. The representative of COMEST reaffirmed the terms of his previous statement.

47. The view was expressed that the Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disasters, signed by ESA, the Centre national d'études spatiales of France and the Canadian Space Agency, deserved strong support. In the view of that delegation, it was also very important to achieve greater participation in the ITU Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations.

48. Some delegations expressed the view that there was a lack of coordination in the space-related activities of various specialized agencies of the United Nations system and that that situation should be corrected. In that regard the Subcommittee noted that there already existed certain mechanisms for coordination of outer space activities in the United Nations (the Administrative Committee on Coordination and the annual Inter-Agency Meeting on Outer Space Activities) that had been designed to address the problem.

49. The representative of ESA presented views on the definition of ethics and the relationship between ethics, morals and law, referring to the outer Space Treaty.

50. The full text of the statements made by delegations during the discussion on agenda item 5 is

contained in unedited verbatim transcripts (COPUOS/Legal/T.641-646).

V. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union

51. At the 642nd meeting, on 3 April, the Chairman made an introductory statement on agenda item 6.

52. The Chairman drew attention to the fact that the General Assembly, in its resolution 55/122, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space[3] that the Legal Subcommittee, at its fortieth session, taking into account the concerns of all countries, in particular those of developing countries, continue its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union (ITU).

53. The Legal Subcommittee had before it the following documents:

(a) Report of the Legal Subcommittee on its thirty-ninth session (A/AC.105/738);

(b) Report of the Scientific and Technical Subcommittee on its thirty-eighth session (A/AC.105/761);

(c) Note by the Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from member States" (A/AC.105/635 and Adds.1-5), which had been before the Legal Subcommittee at its thirty-seventh session;

(d) Note by the Secretariat entitled "Comprehensive analysis of the replies to the questionnaire on possible legal issues with regard to aerospace objects" (A/AC.105/C.2/L.204), which had been before the Subcommittee at its thirty-sixth session.

54. Some delegations expressed the view that a definition and delimitation of outer space were indispensable for member States to have a legal basis on which to regulate their national territories and to resolve issues arising from collisions that could occur between aerospace objects and aircraft. Some delegations also expressed the view that recent technological developments and emerging legal questions made it necessary for the Legal Subcommittee to consider the question of the definition and delimitation of outer space without delay. The view was expressed that differences of a legal nature existed between the legal regime of outer space and that of airspace.

55. The view was expressed that, in considering the definition and delimitation of outer space, due regard should be paid to establishing a delicate balance between the principle of state sovereignty over territorial airspace and the principle of freedom of exploration and use of outer space in order to avoid possible abuse of the freedom of exploration and use of outer space that could jeopardize the sovereign rights an security of States.

56. The view was expressed that, in considering the delimitation of outer space, the right of innocent passage through the airspace of other States for objects launched into and returning from outer space should be envisaged.

57. The view was expressed that it was not necessary to develop any definition or delimitation of outer space when the absence of such a definition had not resulted in any legal or practical problems. That delegation believed that the differing legal regimes applicable in respect of airspace and outer space operated well in their respective spheres and that the lack of a definition and delimitation of outer space had not impeded the development of activities in either sphere.

58. The view was expressed that the replies to the questionnaire and the comprehensive analysis of those replies prepared by the Secretariat (A/AC.105/635 and Adds.1-5 and A/AC.105/C.2/L.204) provided the basis for moving towards consensus on the issue of the delimitation and definition of outer space.

59. The view was expressed that the provision of replies to the questionnaire on aerospace objects would not necessarily contribute to the discussion on the question of defining and delimiting outer space. Although it was acknowledged that questions of choice of law, liability and sovereignty in relation to the term "aerospace object" did exist, no direct link between the nine questions and the question on the definition and delimitation of outer space was apparent. That delegation believed that the Subcommittee's efforts should focus more on the improvement of space activities rather than on the consideration of the particular character and nature of outer space as, even if all the member States were to reply to the questionnaire, it would be difficult to determine the technical characteristics for the delimitation of outer space.

60. The Legal Subcommittee welcomed the agreement adopted at its thirty-ninth session on the question of the character and utilization of the geostationary orbit. Some delegations expressed the view that the agreement was an important basis for promoting international cooperation, to ensure that the principle of equity would be applied and that all States would have access to the geostationary orbit.

61. While noting the work undertaken by ITU relating to the scientific and technical aspects of the utilization of the geostationary orbit, some delegations expressed the view that the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee continued to be the competent bodies to discuss the legal and political aspects of the geostationary orbit. Another delegation expressed the view that ITU and the Committee on the Peaceful Uses of Outer Space should work in harmony to ensure that the principle of equity was recognized in the assignment of the frequency bands of ITU. The view was expressed that the practice of "paper" satellites in the geostationary orbit hindered the equitable and efficient use of that orbit.

62. Some delegations expressed the view that the geostationary orbit was a limited natural resource with sui generis characteristics and that equitable access to it should be guaranteed for all States, taking particular account of the needs of developing countries. Some of those delegations expressed the view that such a regime should take into account the needs of the equatorial countries in particular because of their special geographical characteristics.

63. The view was expressed that the geostationary orbit constituted an integral part of outer space and that it was governed by the provisions of the Outer Space Treaty.

64. The Legal Subcommittee noted that ITU had not been able to attend its current session and expressed the hope that, in view of its positive contribution to the work of the Legal Subcommittee, ITU would continue to be represented at future sessions.

65. As mentioned in paragraph 9 (a) above, at its 639th meeting, on 2 April, the Legal Subcommittee re-established its Working Group on agenda item 6 (a) under the chairmanship of Socorro Flores Liera (Mexico). In accordance with the agreement reached at the thirty-ninth session, endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-third session, the Working Group would convene to consider only matters relating to the definition and delimitation of outer space.

66. The Working Group on agenda item 6 (a) held four meetings. At its 654th meeting, on 12 April, the Legal Subcommittee endorsed the report of the Working Group, which is contained in annex I to the present report. The view was expressed that the discussion on the question of the definition and delimitation of outer space was not useful and that that delegation did not share the views expressed in paragraphs 9-12 of the report of the Working Group.

67. The full text of the statements made by delegations during the discussion on agenda item 6 is contained in unedited verbatim transcripts (COPUOS/Legal/T.642-649 and 654).

VI. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space

68. At the 643rd meeting, on 4 April, the Chairman made an introductory statement on agenda item 7. The Chairman drew attention to the fact that the General Assembly, in its resolution 55/122, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee

continue its consideration of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (resolution 47/68), as a single issue and item for discussion.

69. The Subcommittee noted the work carried out by the Scientific and Technical Subcommittee at its thirty-eighth session on the item entitled "Use of nuclear power sources in outer space" under a four-year work plan, the second year of which reviewed national and international processes, proposals and standards and national working papers relevant to the launch and peaceful use of nuclear power sources in outer space (A/AC.105/761, paras. 64-74). The Legal Subcommittee noted that, at the thirty-ninth session of the Scientific and Technical Subcommittee, in 2002, the Subcommittee's Working Group on the Use of Nuclear Power Sources in Outer Space would submit a report that would provide information to the Scientific and Technical Subcommittee and, at its fortieth session, in 2003, the Scientific and Technical Subcommittee would determine whether or not to take any additional steps concerning the information contained in the report of the Working Group.

70. The full text of the statements made by delegations during the discussion on agenda item 7 is contained in unedited verbatim transcripts (COPUOS/Legal/T.643-647).

VII. Consideration of the draft convention of the International Institute for the Unification of Private Law (Unidroit) on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property

71. At the 648th meeting, on 9 April, the Chairman made an introductory statement on agenda item 8 in which he recalled that this was a new single issue/item for discussion added to the agenda of the Subcommittee in accordance with the agreement reached by the Committee on the Peaceful Uses of Outer Space at its forty-third session, in 2000.[3]

72. Also at the 648th meeting, at the invitation of the Legal Subcommittee, a representative of the secretariat of Unidroit also made an introductory statement in which he reviewed the progress to date and future planned action within that organization for the development of the draft convention and preliminary draft protocol.

73. The Subcommittee had before it the following:

(a) Report of the Secretariat and the secretariat of Unidroit on the draft Unidroit convention on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property (A/AC.105/C.2/L.225);

(b) Working paper submitted by the secretariat of Unidroit (A/AC.105/C.2/L.227);

(c) Working paper submitted by delegations of the member and cooperating States of ESA that are members of the Committee on the Peaceful Uses of Outer Space (A/AC.105/C.2/L.229);

(d) Two conference room papers containing the texts of the draft Unidroit convention on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property (A/AC.105/C.2/2001/CRP.3 and A/AC.105/C.2/2001/CRP.4, respectively).

74. The Subcommittee noted that the draft Unidroit convention on international interests in mobile equipment, together with the draft protocol thereto on matters specific to aircraft equipment, was scheduled to be presented for adoption by a diplomatic conference to be held in South Africa from 29 October to 16 November 2001. The preliminary draft space protocol was scheduled to be presented for consideration by the Governing Council of Unidroit at its next meeting, to be held from 17 to 19 September 2001, with a view to the Council's approval of its transmission to Governments and the convening of intergovernmental experts. The Subcommittee noted that it was envisaged that, where necessary and appropriate, the space protocol would be able to modify the provisions of the base convention as they were applicable to that category of equipment.

75. Some delegations expressed the view that the draft Unidroit convention on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property represented an important initiative that was of considerable interest to member States.

76. The Subcommittee felt that there remained a number of issues and concerns to be addressed, in particular with regard to the relationship between that initiative and existing international space law and that, in view of its primary responsibility for the development of international space law, the Subcommittee should make every effort to deal effectively with those aspects of the subject falling within its competence.

77. The view was expressed that the initiative held considerable potential for facilitating the development of commercial activities in outer space, to the benefit of countries and in all economic spheres. That delegation was of the opinion that a gap in the financing of space projects was emerging as the availability of governmental and venture capital funding declined and that that gap might well be filled by the extension of the benefits of asset-based financing to space activity through the draft Unidroit convention on international interests in mobile equipment and the preliminary draft space protocol. In order not to stifle those potential economic benefits, that delegation stressed the need to ensure that the final texts of those instruments satisfied the requirements of financial markets to overcome existing commercial risks associated with financing of space projects.

78. The attention of the Subcommittee was drawn to the fact that UNCITRAL was currently engaged in the development of a draft convention on assignment of receivables and that a potential overlap existed between the legal regime to be established under that project and that envisaged by the Unidroit draft convention and equipment-specific protocols. That potential conflict had yet to be resolved and could be an additional issue for consideration by the Subcommittee.

79. Some delegations expressed the view that it would be beneficial to obtain the views of ITU on the contents of the draft convention and preliminary draft space protocol and urged the secretariat of Unidroit and member States of ITU to make every effort to encourage the submission of such views from ITU as soon as possible. Some of those delegations expressed the view that member States of the Committee on the Peaceful Uses of Outer Space needed to participate actively to ensure the full success of the diplomatic conference for the adoption of the draft convention and the draft aircraft protocol, to be held in South Africa from 29 October to 16 November 2001.

80. The view was expressed that a primary issue to be considered was the interrelationship of the draft space protocol with the draft convention. That delegation noted that the issue had also not yet been resolved in the context of the draft protocol on matters specific to aircraft equipment, a matter that was left to be decided by the diplomatic conference to be held in South Africa.

81. Some delegations expressed the view that numerous aspects of the initiative fell outside of the traditional scope of the work and competence of the Legal Subcommittee relating to public international law. Those delegations were of the view that it would be inappropriate for the Subcommittee to give detailed consideration to matters falling within the field of private law and consequently attention should be focused exclusively on the compatibility with existing international space law of the draft Unidroit convention and preliminary draft protocol thereto on matters specific to space property.

82. Some delegations expressed the view that while they fully supported the Unidroit initiative, they had some concerns and questions regarding the current text of the preliminary draft space protocol. Firstly, those delegations were of the view that the fact that the preliminary draft protocol had been based largely on the draft protocol on matters specific to aircraft equipment failed to take into account to a sufficient extent the unique nature and utilization of space objects and equipment and their fundamental differences on technical, operational and legal levels from aircraft equipment. Those delegations also noted the fact that the concept of "space property" had yet to be adequately defined in the preliminary draft space protocol and appeared somewhat broader than the concept of "space object" ordinarily used in existing international space law. Those delegations further noted that registration under the proposed regime would require the provision of information beyond that which was currently called for under the Registration Convention. Concern was also expressed regarding the manner in which ground segment elements and confidential data and information such as access codes, as well as issues relating to licences, international responsibility and liability, were to be dealt with under the proposed regime. Finally, those delegations indicated the need for further examination of the potential role of the United Nations as supervisory authority and/or registrar, taking into particular

account the legal basis and implications, as well as the resources necessary to exercise such a role.

83. The view was expressed that the development of an international legal regime on security and financing of space property represented an arduous task involving many complicated and interlinked legal issues. Therefore, in the view of that delegation, the formulation of the draft space protocol would probably be more difficult than the respective protocols on aircraft equipment or railway rolling stock. That delegation was also of the view that, given the wide array of international space law issues and varying space policies of different States, it was important to take effective measures to involve more States in the development of the draft protocol on matters specific to space property, thereby ensuring the consistency of the draft protocol with the existing body of space law. In that regard, the Legal Subcommittee was in a position to provide the necessary assistance. That delegation expressed the view that the preliminary draft protocol on matters specific to space property was not sufficiently mature at that time to be submitted to the Governing Council of Unidroit and proposed that the Secretariat cooperate with the secretariat of Unidroit to prepare and submit a revised text of the instrument to the Legal Subcommittee at its forty-first session, in 2002, for further consideration.

84. The view was expressed that the Secretariat should collaborate with the secretariat of Unidroit to obtain a copy in Spanish of the draft space protocol.

85. The view was expressed that the inclusion within the definition of "space property" of licences, approvals, authorizations and other items that could not ordinarily be transferred under civil law was problematic. That delegation was also of the view that it would be inadvisable to include in the definition such things as contractual and intellectual property rights, which were already adequately addressed under other existing legal regimes. In the view of that delegation, a better approach would be to follow the lead of the draft protocol on matters specific to aircraft equipment and to develop a concrete, specific list of objects that would be subject to the application of the draft space protocol. That delegation also raised concerns regarding the possible transfer of access codes and control of space objects to creditors in cases of default, in particular in cases where the facilities of a single satellite were being shared by multiple users, including States, or where satellites served governmental and public service functions in addition to those of a purely commercial nature. That delegation stressed the importance of including in the text of the draft space protocol a reservation procedure to give States the opportunity to exclude the operation of certain of its provisions.

86. The view was expressed that the interaction and potential conflicts between the proposed system of international interests in mobile equipment and existing domestic legal regimes would require careful analysis.

87. The view was expressed that the nature of the proposed international registry and the information that might be accessible therein could pose difficulties with respect to domestic laws on preservation of confidentiality of financial information.

88. The view was expressed that under the draft Unidroit convention a "notice-filing" system was contemplated, which involved minimal information to put financing parties on notice of other possible interests in that equipment.

89. Some delegations expressed concerns regarding the relationship and possible interaction between the registration system contemplated under the proposed regime and the Register currently maintained by the Secretariat in accordance with the Registration Convention.

90. Other delegations expressed the view that the registration system contemplated under the proposed regime could be distinguished from the Register currently maintained by the Secretariat in accordance with the Registration Convention as the two were fundamentally different in character, purpose and method of operation.

91. The view was expressed that, in developing the registry for aircraft finance, the scope of its application and definitions of "aircraft" and other terms had been determined pragmatically, taking into account financing requirements and available methods of identification through computer systems, and not by a conceptual approach or by reference to other conventions, such as the Convention on International Civil Aviation of 7 December 1944 and Convention on the International Recognition of Rights in Aircraft of 19 June 1948.

92. The view was expressed that while they remained important issues, attempting to reach agreement on the interrelationship of the two registry systems and the role of the United Nations as supervisory authority and/or registrar could be deferred in the light of other issues of more immediate importance relating to the manner in which the Subcommittee would continue to deal with the topic and its interaction in that regard with Unidroit.

93. The view was expressed that the secretariat of Unidroit should be invited to consider making a presentation on the substance of the draft convention and preliminary draft space protocol during the forty-fourth session of the Committee on the Peaceful Uses of Outer Space, in June 2001.

94. The Legal Subcommittee agreed to the establishment of an ad hoc consultative mechanism to review the issues relating to this item, in accordance with a proposal introduced by the delegation of Belgium. The mechanism would make it possible to undertake preparatory work and to hold informal consultations during the forty-fourth session of the Committee on the Peaceful Uses of Outer Space, in June 2001, and, if necessary, inter-sessional consultations at the convenience of interested member States, with the participation of the representatives of the secretariat of the Subcommittee, and to which representatives of the secretariat of Unidroit and relevant specialized international organizations might also be invited, with a view to facilitating the work of the Subcommittee in examining in detail the numerous issues relating to the topic within a time frame appropriate to the importance of the initiative. The mechanism would operate under the aegis of the Legal Subcommittee and the results of consultations undertaken through the mechanism would be reported to the Subcommittee at its forty-first session, in 2002, for its consideration and endorsement, as it deemed appropriate. The Legal Subcommittee noted with interest France's readiness to host, in that connection, a working meeting in Paris in September 2001.

95. The Legal Subcommittee agreed that the item on the draft Unidroit convention on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property should be retained on the agenda for its forty-first session, in 2002.

96. The full text of the statements made by delegations during the discussion on agenda item 8 is contained in unedited verbatim transcripts (COPUOS/Legal/T.648-652).

VIII. Review of the concept of the "launching State"

97. At the 646th meeting, on 6 April, the Chairman made an introductory statement on agenda item 9.

98. The Chairman noted that the General Assembly, in its resolution 55/122, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee continue to consider an agenda item entitled "Review of the concept of the 'launching State'", in accordance with the three-year work plan adopted by the Committee,[4] and that the Subcommittee establish a working group to consider the item.

99. In accordance with the second year of the work plan, the Subcommittee reviewed the concept of the "launching State" as contained in the Liability Convention and the Registration Convention as applied by States and international organizations.

100. The Subcommittee had before it the following:

(a) Note by the Secretariat, entitled "Review of existing national space legislation illustrating how States are implementing, as appropriate, their responsibilities to authorize and provide continuing supervision of non-governmental entities in outer space" (A/AC.105/C.2/L.224);

(b) A compilation of documents relevant to the agenda item, containing background material on the work plan, extracts of national laws relevant to the concept of the "launching State" and examples of multilateral and bilateral agreements relevant to the concept of the launching State (A/AC.105/C.2/2001/CRP.5);

(c) A compilation of presentations made at the fortieth session of the Legal Subcommittee under agenda item 9 (A/AC.105/C.2/2001/CRP.10).

101. The representative of Australia presented an overview of the policy of the Government of Australia aiming at facilitating commercial space programmes consistent with Australia's obligations under the five

United Nations treaties on outer space. The representative noted that the promulgation of the Space Activities Act of 1998, the development of accompanying regulations and the establishment of an independent Space Licensing and Safety Office were key measures towards the creation of a legal and regulatory framework for commercial space activities in Australia. The Space Activities Act contained, among other things, a regime for licensing launches from Australian territory and launches of Australian payloads from overseas sites. In order to obtain government permission to launch a space object, an applicant must have demonstrated, among other things, (a) that it was competent to operate a launch facility and launch vehicles of the kind specified, and (b) that it had comprehensive third-party liability insurance.

102. Additional presentations were made within the Working Group on agenda item 9 (see annex II to the present report).

103. The view was expressed that the review of the concept of the "launching State" by the Legal Subcommittee should further enunciate state obligations under the United Nations treaties on outer space against the background of increasing non-governmental involvement in space activities and joint participation by nationals of more than one State in launching activities.

104. As indicated in paragraph 9 (b) above, at its 639th meeting, the Legal Subcommittee established a Working Group on agenda item 9, under the chairmanship of Kai-Uwe Schrogl (Germany).

105. The Working Group on agenda item 9 held four meetings. At its 654th meeting, on 12 April, the Legal Subcommittee endorsed the report of the Working Group, which is contained in annex II to the present report.

106. The full text of the statements made by delegations during the discussion on agenda item 9 is contained in unedited verbatim transcripts (COPUOS/Legal/T.646-651 and 654).

IX. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-first session

107. At the 652nd meeting, on 11 April, the Chairman made an introductory statement on agenda item 10.

108. The Chairman recalled that a number of proposals for new items to be included in the agenda of the Legal Subcommittee had been considered at the thirty-ninth session of the Legal Subcommittee and the forty-third session of the committee on the Peaceful Uses of Outer Space, in 2000, as reflected in the reports on those sessions:[5]

(a) Review of existing norms of international law applicable to space debris, proposed by the delegations of the Czech Republic and Greece;

(b) Consideration of the appropriateness and desirability of developing a universal comprehensive convention on international space law, proposed by the delegations of Bulgaria, China, Colombia, Greece, the Islamic Republic of Iran and the Russian Federation.

109. The Subcommittee had before it a working paper (A/AC.105/C.2/L.226), submitted by the delegations of China, Colombia and the Russian Federation and introduced during the Subcommittee's consideration of agenda item 4, which contained a proposal for the convening of an ad hoc informal open-ended working group to consider the appropriateness and desirability of developing a universal comprehensive convention on international space law.

110. The Subcommittee noted that the delegation of Greece had, during the Subcommittee's consideration of agenda item 4, introduced a proposal, which had subsequently been revised by that delegation during the 653rd meeting, on 11 April. The revised proposal was for the amendment of the title of agenda item 4 to read "Review of the status of the five United Nations treaties on outer space and evaluation of the implementation process of outer space law provisions, including the Principles and other relevant resolutions adopted by the United Nations General Assembly" and for a working group to be established to consider matters under the item as amended.

111. At the 653rd meeting, on 11 April, the delegation of the United States proposed the inclusion in the agenda of the Legal Subcommittee at its forty-first session of a single issue/item for discussion on international cooperation in limiting obtrusive commercial space advertising that could interfere with astronomical observations. The purpose of the item would be to define the legal aspects of the problem in the light of the work to be done by the Scientific and Technical Subcommittee at its next session and by relevant international organizations, as well as whether the topic deserved further attention in the Subcommittee. In addition, relevant international organizations would be invited to submit reports to the Subcommittee or to make special presentations on the topic.

112. Also at the 653rd meeting, the delegation of Greece re-introduced its proposal for the inclusion in the agenda of the Legal Subcommittee at its forty-first session of an item on review of the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting and the Principles Relating to Remote Sensing of the Earth from Outer Space, with a view to possibly transforming those texts into treaties in the future.

113. The view was expressed that the inclusion in the agenda of the Legal Subcommittee at its forty-first session of an item on the review of existing norms of international law applicable to space debris, as proposed by the delegations of the Czech Republic and Greece, would be both timely and appropriate. That delegation noted the work plan on the issue of space debris agreed upon at the thirty-eighth session of the Scientific and Technical Subcommittee and expressed the view that consideration of the proposed item by the Legal Subcommittee would complement rather than conflict with that work plan. That delegation also noted that the European Centre for Space Law planned to report to the Subcommittee at its forty-first session on its activities relating to that subject.

114. The view was expressed that the working group that might be established under agenda item 4 in accordance with the proposal of the delegation of Greece could examine, inter alia, the following topics:

(a) Status of participation in the five international treaties on outer space and obstacles to reaching universality;

(b) Survey and evaluation of national regulations and those of various international organizations on outer space activities and their interaction with the outer space treaties;

(c) Evolution of space law in relation to the developments of space technology applications, taking into particular account specific problems arising out of the commercialization and privatization of outer space activities;

(d) Inter-sessional and inter-agency cooperation;

(e) Information to the general public on the activities of United Nations bodies and specialized agencies relating to outer space;

(f) Promotion of space law, especially by the United Nations Programme on Space Applications and through the regional centres for space science and technology education.

115. The view was expressed that there was merit in including in the deliberations on agenda item 4 some of the topics proposed by the delegation of Greece, such as the evolution of space law in relation to the developments of space technology applications, taking into particular account specific problems arising out of the commercialization and privatization of outer space activities; inter-sessional and inter-agency cooperation; and the promotion of space law, especially by the United Nations Programme on Space Applications and through the regional centres for space science and technology education. However, that delegation was not in favour of the establishment of a working group for that purpose.

116. Some delegations expressed the view that a broader approach should be taken to the work of the Legal Subcommittee in view of the continuing developments in space science and technology, its growing commercialization and the number of new actors engaging in space activity. In the view of those delegations, the proposal of the delegation of Greece represented an appropriate and valuable move towards such a broader approach and should be supported.

117. The view was expressed that the current formulation of agenda item 4 provided the Subcommittee with sufficient flexibility, while nonetheless ensuring the necessary structure for its deliberations. Another delegation expressed the view

that the proposal submitted by the delegation of Greece concerning agenda item 4 was too broad and generalized in scope. That delegation was of the view that the purpose of adding new items to the agenda of the Subcommittee should rather be to enable the development of concrete results for tangible issues pertaining to space-related activities in the foreseeable future.

118. The Subcommittee agreed that the title of agenda item 4 should remain "Status and application of the five United Nations treaties on outer space". The Subcommittee also agreed that a working group should be established on the agenda item, the terms of reference of which would include the status of the treaties, review of their implementation and obstacles to their universal acceptance, as well as promotion of space law, especially through the United Nations Programme on Space Applications.

119. The view was expressed that any consideration of the topic of international cooperation in limiting obtrusive commercial space advertising by the Legal Subcommittee could only be engaged in following deliberations within the Scientific and Technical Subcommittee on the same topic. For that reason and in view of the fact that the topic had been included as a possible item in the provisional agenda of the Scientific and Technical Subcommittee at its thirty-ninth session, in 2002, that delegation was of the view that consideration of the topic during the forty-first session of the Legal Subcommittee, in 2002, would be premature.

120. The view was expressed that an in-depth discussion on the issue of the definition and delimitation of outer space by the Legal Subcommittee served no current purpose. That delegation was also of the view that a continuation of the analysis of responses to the questionnaire on aerospace objects was equally without value at the present time. That delegation therefore expressed the hope that a resolution of the topic in a similar manner to that reached on the issue of the character and utilization of the geostationary orbit might soon be achieved.

121. Other delegations expressed the view that consideration by the Legal Subcommittee of the issue of the definition and delimitation of outer space remained important and appropriate. Those delegations were also of the view that the lack of additional responses from States to the questionnaire on aerospace objects was not necessarily indicative of a lack of interest in the subject.

122. The Legal Subcommittee conducted informal consultations coordinated by Vassilios Cassapoglou (Greece) and Niklas Hedman (Sweden) with a view to reaching agreement on the various proposals before the Subcommittee for consideration under this agenda item.

123. The Legal Subcommittee agreed on the following items to be proposed to the Committee on the Peaceful Uses of Outer Space for inclusion in the agenda of the Subcommittee at its forty-first session:

(i) Regular items

1. Opening of session and adoption of the agenda.
2. Statement by the Chairman.
3. General exchange of views.
4. Status and application of the five United Nations treaties on outer space.
5. Information on the activities of international organizations relating to space law.
6. Matters relating to:
   (a) The definition and delimitation of outer space;
   (b) The character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.

(ii) Single issues/items for discussion

7. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.
8. Consideration of the draft convention of the International Institute for the Unification of Private Law (Unidroit) on international interests in mobile

protocol thereto on matters specific to space property.

(iii) Agenda items considered under work plans

9. Review of the concept of the "launching State".

(iv) New items

10. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-second session.

124. The full text of the statements made by delegations during the discussion on agenda item 10 is contained in unedited verbatim transcripts (COPUOS/Legal/T.652-654).

Notes

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

[2] See *Report of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space, Vienna, 19-30 July 1999* (United Nations publication, Sales No. E.00.I.3).

[3] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 20* (A/55/20), para. 167.

[4] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 20* and corrigendum (A/54/20 and Corr.1), para. 114.

[5] See A/AC.105/738, paras. 91-113, and *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 20* (A/55/20), paras. 154-167.

Annex I

Report of the Chairperson of the Working Group on agenda item 6 (a), "Matters relating to the definition and delimitation of outer space"

1. At its 639th meeting, on 2 April, the Legal Subcommittee re-established its Working Group on agenda item 6 (a), "Matters relating to the definition and delimitation of outer space". At its 643rd meeting, on 4 April, the Subcommittee elected Socorro Flores Liera (Mexico) Chairperson of the Working Group.

2. The Chairperson drew the attention of the Working Group to the fact that, in accordance with the agreement reached at the thirty-ninth session of the Legal Subcommittee, endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-third session, the Working Group would convene to consider only matters relating to the definition and delimitation of outer space.

3. The Working Group had before it the following documents:

(a) The report of the Legal Subcommittee on its thirty-ninth session (A/AC.105/738), annex I of which contained the report of the Chairman of the Working Group at that session;

(b) Note by the Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from member States" (A/AC.105/635 and Adds.1-5), which had been before the Legal Subcommittee at its thirty-seventh session;

(c) Note by the Secretariat entitled "Comprehensive analysis of the replies to the questionnaire on possible legal issues with regard to aerospace objects" (A/AC.105/C.2/L.204), which had been before the Subcommittee at its thirty-sixth session.

4. During the course of the debate, the Chairperson of the Working Group suggested and the Working Group agreed that, in addition to addressing the question of the definition and delimitation of outer space as a whole, the Working Group could also consider the replies received to the questionnaire on aerospace objects as contained in the note by the Secretariat entitled "Comprehensive analysis of the replies to the questionnaire on possible legal issues with regard to aerospace objects" (A/AC.105/C.2/L.204) in order to provide a basis for the Group to consider the question of the definition and delimitation of outer space at future sessions.

5. Some delegations expressed the view that a definition and delimitation of outer space were indispensable for member States to have a legal basis on which to regulate their national territories, as well as to resolve various practical issues, for example, resulting from collisions that could occur between aerospace objects and aircraft.

6. The view was expressed that as there was no need for a definition and delimitation of outer space or for new legal definitions or rules with respect to aerospace objects, it was not necessary to resolve those issues in the context of the questionnaire on aerospace objects, which had received very few and divergent replies.

7. The view was expressed that although consideration of the replies to the questionnaire on aerospace objects as contained in the note by the Secretariat (A/AC.105/C.2/L.204) could lead to greater certainty on the applicable law in the case of aerospace objects, the Working Group should nonetheless not lose sight of the fact that the main objective of its work was to consider the question of the definition and delimitation of outer space and that the document should therefore be considered as a whole and not on a question-by-question basis.

8. The views expressed on various issues set out in the questions and replies to the questionnaire on aerospace objects as contained in the note by the Secretariat are summarized below:

(a) Some delegations expressed the view that the words "space transportation system" in the definition contained in paragraph 17 of the analysis should be removed. Other delegations expressed the view that the word "moving" would be more appropriate and should replace the words "travelling

through [or staying in]" in the definition. The Working Group agreed that the definition of an aerospace object could for the purpose of its discussion read as follows: "An aerospace object is an object that is capable of moving in outer space and of using its aerodynamic properties to remain in airspace [for a certain period of time] [for (primarily) (exclusively) space purposes]";

(b) Some delegations expressed the view that a functional approach, one based, that is, on the purpose of an aerospace object, would be more appropriate in determining which legal regime should be applied and that consequently a definition and delimitation of outer space would not be necessary. The view was expressed that determining the legal regime on the basis of where the object was located, that is, in airspace or in outer space, would result in practical problems relating to the law applicable and that a unified legal regime should be applied in the case of aerospace objects as long as such a regime was complementary to air law and flight safety regulations for aircraft;

(c) The view was expressed that as the Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI), annex) identified two forms of liability, liability based on fault when damage occurred in outer space and absolute liability when damage occurred on the surface of the Earth or in airspace, consequently the applicable legal regime could not be determined on the basis of the characteristics of the object but rather on the place where the damage was caused;

(d) Some delegations expressed the view that where an aerospace object served only the purpose of astronautics, such as the Space Shuttle, it did not require a different regime for its take-off and landing phases provided that it observed, as necessary, the principles and rules of air law in order to avoid a violation of air safety. However, an aerospace object that would be capable of serving in both capacities, that is, being able to fly as an aircraft in airspace and move as a spacecraft in outer space, should operate in conformity with air law or space law in the respective parts of its mission;

(e) The view was expressed that it was necessary to establish at what altitude an object would be considered launched from the territory of a State or at what altitude an object would be regarded as launched from outer space. Another delegation expressed the view that the principle of territoriality could apply in the case mentioned and that it would not be necessary to determine whether the object was launched from the territory of a State or in outer space as the launching base or aircraft was an extension of territoriality. Another delegation expressed the view that the State of registry of the craft would be the State responsible for such activities;

(f) The view was expressed that, in considering whether national or international air law was applicable to an aerospace object while it was in the airspace of another State, delegations should distinguish between objects passing through the airspace of foreign States for the sole purpose of entering or leaving outer space and those objects which would be capable of manoeuvring in and out of airspace and outer space. In the view of that delegation, in the case of objects being launched into or returning from outer space and travelling through the airspace of other States, outer space law and the principle of innocent passage should apply and information on the time and trajectory of the aerospace object would be provided to that subjacent State for safety purposes. However, in the case of an object capable of manoeuvring in and out of airspace and outer space, permission from the State whose airspace that object would be travelling through should be required;

(g) The view was expressed that the principle of innocent passage had become a rule of customary law in the case of aerospace objects. Another delegation expressed the view that while in practice such passage occurred without any protest being raised, there was not yet sufficient support for the conclusion that the principle of innocent passage through the airspace of a foreign State had become a rule of customary law. That delegation was of the view that a more detailed regulation of the exercise of the right of passage should be considered as a way to legalize the actual practice, as long as such passage was innocent and not prejudicial to the peace, good order or security of other States;

(h) It was indicated that, in the case of one particular State, two acts of national legislation were applicable to the passage of foreign flying objects through airspace. In accordance with the Air Code and the Federal Law on State Boundaries of that State, any foreign object travelling through its airspace without

prior permission would be in violation of that State's sovereignty and appropriate measures would be undertaken by the authorities of that State;

(i) The view was expressed that the rules concerning the registration of objects launched into outer space were applicable to aerospace objects. That delegation was of the view that, irrespective of the fact that a particular object was used only in part for outer space activities, it should nonetheless be registered in accordance with the provisions of the Registration Agreement.

9. The Working Group agreed that the questionnaire on aerospace objects and the comprehensive analysis of the replies received (A/AC.105/635 and Adds.1-5 and A/AC.105/C.2/L.204) could serve as a basis for future consideration of the subject. The Working Group agreed that, as very few replies had been received, member States should be requested to consider submitting or updating replies to the questionnaire in the interest of making progress in the work on the subject.

10. The Working Group agreed that the questionnaire on aerospace objects and the analysis prepared by the Secretariat (A/AC.105/635 and Adds.1-5 and A/AC.105/C.2/L.204) should be placed on the web site of the Office for Outer Space Affairs and that a direct link to the documents should be established from its home page (http://www.oosa.unvienna.org).

11. The Working Group agreed that the Secretariat should prepare, for its next session, a brief historical summary on the consideration of the question on the definition and delimitation of outer space in the Legal Subcommittee and to indicate points of consensus, if any, that might have emerged over the years.

12. The Working Group agreed that member States should be invited to make presentations to the Working Group on the question of the definition and delimitation of outer space and what their practices had been, at the forty-first session of the Legal Subcommittee, in 2002.

Annex II

Report of the Chairman of the Working Group on agenda item 9, "Review of the concept of the 'launching State'"

1. At its 639th meeting, on 2 April 2001, the Legal Subcommittee established a Working Group on agenda item 9, "Review of the concept of the 'launching State'", with Kai-Uwe Schrogl (Germany) as its Chairman.

2. The Chairman reviewed the tasks before the Working Group, noting that its mandate was to conduct a review of the concept of the "launching State", not to amend or interpret the existing treaties. He noted that presentations in 2000 in the Scientific and Technical and Legal Subcommittees, compiled in notes by the Secretariat of 30 March and 5 April 2000 (A/AC.105/C.2/2000/CRP.8 and CRP.12, respectively), showed that States were considering carefully how to apply the concept of the "launching State", but that questions in applying the concept had recently arisen. In that context, the Chairman noted the importance of national legislation and licensing regimes.

3. The Secretariat outlined the methodologies used to prepare the documents that were before the Legal Subcommittee under this agenda item, referred to in paragraph 100 of the report of the Subcommittee.

4. The Legal Subcommittee requested the Secretariat to prepare for it at its forty-first session a document that would contain the following:

(a) A synthesis of state practice in applying the concept of the "launching State";

(b) Questions regarding the application of the concept of the "launching State" arising from state practice and from new developments in space activities;

(c) Elements that could be included in national space legislation and licensing regimes.

5. The document would synthesize information contained in documents before the Subcommittee under this agenda item at its thirty-ninth and fortieth sessions. The Working Group invited Member States and international organizations to convey to the Secretariat any additional information on state practice, including practice in States that did not currently national space laws, for possible inclusion in synthesis.

6. The view was expressed that the elemen national space legislation covered by the docu should, at a minimum, include the following: (a) s assurance; (b) licensing; (c) liability insurance; (d) modalities for state payment of claims exce liability insurance amounts, including appli measures for indemnifying the State for lia incurred by it.

7. The Working Group noted the presentation by the representative of Australia on the S Activities Act of 1998, as referred to in paragraph of the report of the Legal Subcommittee.

8. The representative of Belgium made a pr tation on the Belgian bill on space activities, w was being drafted. The presentation noted tha concept of the "launching State" was an impo question being considered in the drafting pro involving, in particular, issues such as the definiti a "launch" and the definition of a "space object".

9. The representative of China made a present on Chinese launch systems and international la services, in particular the Long March family of la vehicles, as well as the policy of the Governme China on space activities, including the White Pap Space Activities of 2000 and government regula under the Convention on Registration of Ob Launched into Outer Space (the "Registr Convention", General Assembly resolution (XXIX), annex). The representative of China described his country's practice concerning the sh of liabilities among the joint launching States, na that, during the launching phase (from ignition t point of separation of the satellite from the la vehicle), the liability was on the State that provide launching service and that during the entire oper phase after the separation the liability was taken b

State to which the owner and operator of the satellite belonged.

10. The representative of France made a presentation on the application of concepts in the United Nations treaties on outer space in the light of new developments in space activities, including increasing commercialization, the possible development of aerospace vehicles and the transfer of property over space objects while in outer space.

11. The representative of Sweden made a presentation on the Swedish legislation on space activities, including the Act on Space Activities of 1982 and the Decree on Space Activities of 1982. The presentation noted that the two instruments addressed the following issues: (a) jurisdiction over space activities; (b) requirements for obtaining a licence; (c) penalties for illegal space activities; (d) reimbursement of liability incurred by the State; (e) supervision and control of space activities; and (f) registration. The presentation also noted that the Swedish legislation was based on the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex), the Convention on International Liability for Damage Caused by Space Objects (the "Liability Convention", resolution 2777 (XXVI), annex) and the Registration Convention.

12. The representative of the United Kingdom of Great Britain and Northern Ireland made a presentation on the scope and implementation of the United Kingdom's national space legislation, including the Outer Space Act of 1986. The presentation noted that the Act applied to nationals of the United Kingdom, including individuals and corporations, and to activities whether carried out in the United Kingdom or elsewhere. The presentation noted that the law included the following elements: (a) jurisdiction over space activities; (b) requirement to obtain a licence; (c) requirements for obtaining a licence (including not jeopardizing public health or national security); (d) penalties; (e) registration; and (f) obligation to indemnify the Government for liability. The presentation also noted that some problems might exist when applying the concept of the "launching State", including identification of the State or States that had "procured the launch" of a space object, for instance in the case of transfer of ownership or control over a space object while in orbit and assessment of fault when two satellites collided.

13. The representative of the European Space Agency (ESA) made a presentation on the legal regime for launchings from the Guiana Space Centre, which presented a unique situation involving a relationship between a State, France, which had sovereignty over a territory from which launchings took place and owned the land on which the launch site was situated, and an international organization, ESA, of which France was a member, which owned the launch pad facilities, in particular to be used for research and development activities. Those facilities were made available to ESA member States and a private company, Arianespace, organized under French law, for commercial purposes. The presentation noted that ESA was a "launching State" under the Liability Convention and the Registration Convention, having declared its acceptance of the rights and obligations under those conventions, and maintained a registry under the Registration Convention. France and ESA were meeting their international obligations with respect to launchings from the Guiana Space Centre through a legal framework, including provisions of French law as well as contracts, implementing rules and various international agreements concluded by ESA with member and non-member States.

14. The representative of the International Law Association made a presentation on "Potential building blocks of a national space law", which included (a) authorization of space activities; (b) supervision of space activities; (c) registration of space objects; (d) indemnification regulation; and (e) additional regulations related to the issue of "fair competition".

15. The presentations made at the fortieth session of the Legal Subcommittee under this agenda item were compiled and distributed as a conference room paper (A/AC.105/C.2/2001/CRP.10).

16. Some delegations expressed the view that new developments in space activities, such as increasing commercialization of space activities, had given rise to a number of questions regarding the application of the concept of the "launching State" under the Liability and Registration Conventions, as well as the application of other terms in the United Nations treaties and principles on outer space, including "territory", "facility", "State which launches" and "procures" (in art. I of the Liability and Registration Conventions),

"responsible for" (in art. 6 of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (General Assembly resolution 2345 (XXII), annex)) and "exercises jurisdiction and control" (in Principle 2 of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (resolution 47/68)).

17. Some delegations expressed the view that the State or States providing launch services should not be liable for damage caused by a payload after the payload had been placed successfully into the proper orbit. Thereafter, in the view of those delegations, the State or States that owned or operated the payload should be liable for damage caused by it.

18. The view was expressed that a question existed of whether States were liable for activities of their nationals who had launched or procured the launch of a space object. That delegation expressed concern that States might not always be able to provide effective, continuing supervision or control over activities of nationals who might be outside the jurisdiction of the State.

19. The view was expressed that a claims commission or arbitrator, when determining the "launching States" for a particular launch, would look to the territory from which the space object was launched and the nationality of the facility from which the space object was launched, even if the facility was not owned by the Government. That delegation also expressed the view that the launching States were determined by international law, not by national legislation.

20. Other delegations noted that the concept of the "launching State" did not refer expressly to the possibility of launching space objects from the high seas. Those delegations expressed the view that a restrictive interpretation of the treaties might create a lacuna in application of the Liability Convention and might lead to the use of flags of convenience for launch activities.

21. Some delegations also noted that the concept of the "launching State" did not refer expressly to launches from the air and expressed the view that that might also create a lacuna in application of the relevant treaties.

22. Some delegations noted that the concept of the "launching State" did not refer expressly to the possibility of transfer of ownership or control over a space object in orbit.

23. The view was expressed that national space legislation constituted state practice, which, under the Vienna Convention on the Law of Treaties,[a] would be taken into account by tribunals determining which State or States were "launching States" with respect to a specific launch.

24. The observer for the International Astronautical Federation expressed the view that national legislation extending a State's jurisdiction to supervise a particular launch might be interpreted as an indication that the State concerned considered itself to be a "launching State" with respect to that launch and that the existence of such national space legislation might therefore make both national and international remedies more easily available to victims. On the other hand, in the view of that observer, that could create a problem of non-uniform national approaches towards the application of the concept of the "launching State".

25. The observer for the International Mobile Satellite Organization expressed the view that the regime of state liability under the United Nations treaties and principles on outer space was becoming less appropriate in an era of increasing private involvement and diminishing government involvement in space activities. That observer expressed the view that a regime could be employed similar to that under maritime law, in that, rather than employing state liability, the legal entity owning or operating a vessel or providing cargo for the vessel would be liable directly to the victim. That observer expressed the view that it was more relevant to consider a State's responsibility for activities of its nationals than it was to consider the liability of the "launching State".

26. The view was expressed, however, that there was still substantial direct government involvement in space activities and that a regime of state liability was still relevant for that reason. Moreover, that delegation expressed the view that to the extent that ships could be considered "facilities" for the purpose of the application of the Liability Convention, the existence of maritime law concepts was less relevant.

27. The view was also expressed that the system of state liability reflected in the United Nations treaties on outer space constituted a safety net for possible victims rather than a single exclusive system. That delegation

expressed the view that the existing system of liability under maritime law was not the best model for the possible evolution of a space law liability system.

28. Some delegations expressed the view that while, under article V of the Liability Convention, all "launching States" were jointly and severally liable for damage caused by a space object, it was possible for States involved in a particular launch to conclude agreements apportioning liability between them, which could be regarded as a solution to the above-mentioned questions with regard to application of the concept of the "launching State". Those delegations also expressed the view that those agreements would be without prejudice to the right of a State sustaining damage to seek the entire compensation from any or all of the "launching States".

29. Some delegations expressed the view that neither the document to be prepared by the secretariat (see para. 4 above) nor the Working Group could not formulate an authoritative interpretation of the concept of the "launching State", as contained in the agreements relating to the United Nations treaties on outer space, since that would be the task of a conference of States parties to the relevant treaties.

30. The view was expressed that no adverse effects had resulted from any asserted ambiguity in the definition of the "launching State". Both States and private ventures had continued to conduct launches notwithstanding any possible ambiguities.

Notes

[a] United Nations, *Treaty Series*, vol. 1155, p. 331.